

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| Mark M. Lewis,          | ) | Civil Action No. 4:11-715-TLW-TER |
|                         | ) |                                   |
| Plaintiff,              | ) |                                   |
|                         | ) |                                   |
| -vs-                    | ) | <b>ORDER</b>                      |
|                         | ) |                                   |
| Omni Indemnity Company, | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |
| _____                   | ) |                                   |

This action has been filed by the Plaintiff, who is proceeding *pro se*. This matter is now before the undersigned for review of the Report and Recommendation (“the Report”) filed by United States Magistrate Judge Thomas E. Rogers, III, to whom this case had previously been assigned pursuant to 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2) (D.S.C.). In his Report, Magistrate Judge Rogers recommends that this action be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The Report was filed on July 10, 2012. On July 26, 2012, Plaintiff filed objections to the Report and filed a “Motion in Opposition of Dismissal of Complaint.” (Docs. # 59 & # 60).

In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections. . . . The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F.Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of this standard, the Court has reviewed, de novo, the Report and the objections thereto. Based on the additional filings by Plaintiff, the Court chooses not to accept the Report at this time, which recommends a dismissal based solely on Rule 41(b) of the Federal Rules of Civil Procedure. The Court remands this case back to the Magistrate Judge for review of the additional filings by Plaintiff (Docs. # 59 & # 60) and for any further appropriate action.

**THEREFORE, IT IS HEREBY ORDERED** that this case is remanded to the Magistrate Judge as outlined herein.

**IT IS SO ORDERED.**

s/ Terry L. Wooten  
**TERRY L. WOOTEN**  
**UNITED STATES DISTRICT JUDGE**

August 22, 2012  
Florence, South Carolina